

Message Text

CONFIDENTIAL

PAGE 01 MANILA 03022 01 OF 02 151131 Z

12

ACTION L-03

INFO OCT-01 EA-11 ADP-00 SCA-01 JUSE-00 VO-03 DODE-00

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P 151040 Z MAR 73

FM AMEMBASSY MANILA

TO SECSTATE WASHDC PRIORITY 3795

C O N F I D E N T I A L SECTION 1 OF 2 MANILA 3022

E. O. 11652: GDS

TAGS: PFOR, RP

SUBJECT: FIRST MEETING EXTRADITION TREATY WORKING GROUP

BEGIN SUMMARY: US/ RP EXTRADITION TREATY WORKING GROUP HAD FIRST MEETING ON 14 MARCH. ITEMS DISCUSSED WERE DOMESTIC IMPLEMENTING LEGISLATION, LIST OF EXTRADITABLE OFFENSES, EXTRADITION OF ONE' S OWN NATIONAL, MILITARY AND POLITICAL OFFENSES, U. S. SERVICEMEN, AND RETRO-ACTIVITY. PHIL PANEL TO PROVIDE DRAFT TREATY. NEXT MEETING IS SCHEDULED FOR 20 MARCH. REQUEST COMMENTS AND INFORMATION. END SUMMARY.

1. FIRST MEETING CONVENED AT DFA. U. S. PANEL WAS CHAIRED BY FRANK E. MAESTRONE, POLITICAL COUNSELOR. MEMBERS WERE CONSUL MARY CHIAVARINI, SUBSTITUTING FOR LOREN E. LAWRENCE, COUNSELOR FOR CONSULAR AFFAIRS, AND MAJOR A. JERRY BUTLER, LEGAL OFFICER. PHIL PANEL WAS CHAIRED BY DFA ASST. SEC. FOR LEGAL AFFAIRS JOSE PLANA. MEMBERS WERE COL. SAMUEL SORIANO OF DEPARTMENT OF NATIONAL DEFENSE AND BUENAVENTURA DE LA FUENTE OF DEPARTMENT OF JUSTICE. U. S. CHAIRMAN GAVE SHORT OPENING TALK LAYING OUT THE GROUND RULES THAT STRESSED WORKING GROUP DISCUSSION WOULD NOT COMMIT EITHER GOVERNMENT AND TALKS SHOULD NOT RECEIVE PUBLICITY AS U. S. APPROACH TO EXTRADITION TREATIES WAS TECHNICAL AND NONPOLITICAL. ALSO INDICATED THE NEED TO ASCERTAIN EXPECTATIONS OF EACH COUNTRY IN ORDER TO
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PAGE 02 MANILA 03022 01 OF 02 151131 Z

DETERMINE IF FORMAL TALKS WOULD BE SUCCESSFUL. THE MAJOR ITEMS OF DISCUSSION WILL BE DISCUSSED IN SEPARATE PARAGRAPHS.

2. PHIL DOMESTIC IMPLEMENTING LEGISLATION. PHIL PANEL RECOGNIZED THEY HAD NO EXTRADITION LAW BUT DID NOT FEEL THIS WOULD BE A PROBLEM. THEY WERE GIVEN COPIES OF THE U. S. AND NETHERLANDS LEGISLATION. THEY STATED JUSTICE DEPT WOULD STUDY AND HOPEFULLY NEXT WEEK COULD GIVE US SOME IDEA AS TO THEIR APPROACH. THEY IMPLIED THAT UNDER THE PRESENT MARTIAL LAW REGIME, SUCH IMPLEMENTING LEGISLATION COULD BE PROMULGATED IN A PRESIDENTIAL DECREE AND QUICKLY MADE EFFECTIVE. THEY SAW NO DIFFICULTY IN HAVING JUSTICE DEPT. ATTORNEY REPRESENT USG IN EXTRADITION REQUESTS AND WOULD STUDY EVIDENTIARY PROBLEMS IN RELATION TO EXTRADITION.

3. LIST OF EXTRADITABLE OFFENSES. HERE THE PHILS WOULD LIKE TO DEPART FROM U. S. MODEL TREATY AND NOT INCLUDE A LIST OF OFFENSES. THEY WOULD RATHER HAVE ALL OFFENSES COVERED WITH A CRITERIA OF MINIMUM CONFINEMENT AND A CLAUSE THAT WOULD REQUIRE THE FACTS OF EACH OFFENSE TO BE A CRIME UNDER THE LAWS OF BOTH STATES. WE GAVE THEM SOME OF THE REASONS WHY USG FELT IT NECESSARY TO LIST SPECIFIC OFFENSES AND SUGGESTED WE EXPLORE THIS ASPECT AT GREATER LENGTH AT SUBSEQUENT MEETING.

4. EXTRADITION OF ONE'S OWN NATIONALS. THE PHILS STATED THEY WOULD PREFER THIS TO BE MANDATORY. THEY DID NOT APPRECIATE THE OPTION GIVEN THE REQUESTED STATE AS REFLECTED IN THE NEW ZEALAND AND SPANISH AGREEMENTS. THEY REFERRED TO THE US/ BRAZIL, SWEDEN, AND ISRAEL TREATIES WHICH THEY STATED MADE EXTRADITION OF ONE'S OWN NATIONALS MANDATORY. DISCUSSION ENSUED AS TO WHY AN OPTION IN THIS REGARD WAS DESIRABLE AND THIS WILL BE EXPLORED AT GREATER LENGTH. PHIL PANEL SPECIFICALLY STATED ITS BELIEF THAT UNDER EXISTING LAW, EXTRADITION OF THEIR NATIONALS PRESENTS NO PROBLEMS.

5. MILITARY OFFENSES. THE PHILS SURFACED AN UNUSUAL
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PAGE 01 MANILA 03022 02 OF 02 151135 Z

11
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P 151040 Z MAR 73

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TO SECSTATE WASHDC PRIORITY 3796

C O N F I D E N T I A L SECTION 2 OF 2 MANILA 3022

8. RETROACTIVITY. THE PHILS AT FIRST INSISTED THAT ANY TREATY SHOULD BE RETROACTIVE AND THAT THERE WAS NOTHING IN THEIR LAW TO PREVENT SUCH APPLICATION. IN FURTHER DISCUSSION, THEY APPEARED WILLING TO COMPROMISE TO SOME EXTENT. THEY GENERALLY DISCUSSED A TWO YEAR RETROACTIVE CUT- OFF PERIOD; BUT APPEARED ADAMANT THAT SOME TYPE OF RETROACTIVITY WOULD BE NECESSARY. WE ATTEMPTED TO EXPLAIN THAT MOST U. S. TREATIES THAT PROVIDED RETRO- ACTIVITY REPLACED PRIOR EXTRADITION TREATIES BETWEEN THE TWO COUNTRIES AND PERHAPS IT WOULD BE BEST TO START WITH A CLEAN SLATE AND HAVE NO RETROACTIVITY INVOLVED. THIS WILL UNDOUBTEDLY BE A PROBLEM.

9. DRAFT TREATY. THE PHIL PANEL STATED THAT THEY HAD PREPARED A DRAFT TREATY WHICH COVERED ALL THE ABOVE POINTS. THEY INDICATED THAT IT GENERALLY FOLLOWED THE NEW ZEALAND/ SPANISH TREATIES EXCEPT AS INDICATED ABOVE. THEY WILL SUPPLY US WITH A COPY OF THEIR DRAFT IN THE NEXT COUPLE OF DAYS AND WE WILL CABLE IT TO DEPT.

10. COMMENTS: IT WAS APPARENT THE PHILS HAD DONE THEIR HOMEWORK AND ALL OF OUR PREVIOUS FEARS WERE JUSTIFIED BY THE PHILS INITIAL POSITION ON THE CRUCIAL POINTS. EXCEPT FOR THE DOMESTIC LEGISLATION ISSUE, THEIR DESIRES AT THIS TIME ARE SOMEWHAT AT VARIANCE TO WHAT THE U. S. DEEMS TO BE REALISTIC AND WORKABLE. IT SHOULD BE STRESSED THAT ALL THE ABOVE POINTS WERE DISCUSSED IN A GENERAL CONTEXT
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PAGE 02 MANILA 03022 02 OF 02 151135 Z

AT THE FIRST MEETING. IT WAS GENERALLY A TESTING OF WATERS BY BOTH SIDES AND FURTHER INFORMAL SESSIONS WILL BE NECESSARY BEFORE ANY CONCLUSION CAN BE REACHED, ALTHOUGH EXAMINATION OF THEIR DRAFT TREATY WORDING SHOULD PROVIDE US WITH CLEAR PICTURE OF PROBLEMS INVOLVED.

11. NEXT MEETING IS SCHEDULED FOR 20 MARCH. APPRECIATE IF DEPT WOULD PROVIDE US WITH THE FOLLOWING PRIOR TO THAT DATE--(1) THE NAME OF THE LAST COUNTRY IN WHICH AN EXTRADITION TREATY HAS ENTERED INTO FORCE FOR THE US, AND

(2) COMMENTS ON THE PROVISIONS THAT PROVIDE FOR MANDATORY EXTRADITION OF OWN NATIONALS CONTAINED IN ISRAEL, BRAZIL AND SWEDISH TREATIES, AND (3) COMMENTS ON THE SERVICEMEN QUESTION AND OTHER POINTS, AS DEEMED APPROPRIATE.
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